No. 97-843

In The
Supreme Court of the United States
OCTOBER TERM, 1998

AURELIA DAVIS, as next friend of LASHONDA D.,
Petitioner,

v.

MONROE COUNTY BOARD OF EDUCATION, et al.,
Respondents

On Writ of Certiorari to the United States
Court of Appeals for the Eleventh Circuit

BRIEF OF THE NATIONAL EDUCATION ASSOCIATION, NATIONAL ASSOCIATION OF SOCIAL WORKERS, ILLINOIS COALITION AGAINST SEXUAL ASSAULT, DR. LARRY BENNETT, DR. SUSAN FINERAN, DR. LOUISE FITZGERALD, DR. SANDRA M. GORDON,

(Additional *Amici Curiae* listed on inside cover)
AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

JUDITH L. LICHTMAN
DONNA R. LENHOFF*
* *Counsel of Record*
JOCELYN C. FRYE
SANDHYA L. SUBRAMANIAN

National Partnership for Women & Families
1875 Connecticut Avenue, N.W., Suite 710
Washington, D.C. 20009
(202) 986-2600

November 10, 1998

Counsel for Amici Curiae

KARETTA HUBBARD,
MELISSA JOSEPHS,
SENATOR JEANNE KOHL,
NANCY B. KREITER,
ELEANOR LINN,
DR. BERNICE LOTT,
CARL MOORE,
LYNNE REVO-COHEN,
DR. BERNICE R. SANDLER,
SUE SATTEL,
KAREN D. SCHWARTZROCK,
DR. CHAROL SHAKESHAFT,
DR. ROBERT J. SHOOP,
DR. NAN STEIN,
SUSAN STRAUSS,
MARGARET WEEKS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES AND REGULATIONS

MISCELLANEOUS

INTEREST OF AMICI CURIAE

Amici curiae are educators, researchers, and practitioners with a long history of researching gender-related issues in education; advising schools, teachers, and employers at all levels on how to address sexual harassment in schools and other institutional settings; and working to further the goals of Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688 ("Title IX"), to ensure equitable educational opportunities for all students. Background information on each of the amici is set forth in the attached Appendix.

Amici have the consent of the parties to file this brief. Letters of consent have been filed separately in this Court.[1]

SUMMARY OF ARGUMENT

Although peer sexual harassment has emerged as a persistent problem, schools are far from powerless to respond. Requiring schools to adopt prompt and appropriate measures to remedy peer sexual harassment offers a remedy to victims of sexual harassment, while leaving schools the freedom to tailor their response to the particular facts of each case. Schools routinely handle a wide range of disciplinary matters and have the institutional capacity to respond effectively without suffering undue

---

[1] This brief was authored by the amici and counsel listed on the front cover of this brief, and was not authored in whole or in part by counsel for a party. No one other than the amici and their counsel made any monetary contribution to the preparation or submission of this brief.

burdens. Furthermore, schools can draw on a multitude of educational resources to maximize the effectiveness of that response.

Holding schools accountable for their failure to respond to known sexual harassment neither traps schools in a double bind between alleged harassers and victims, nor sends schools spiraling toward financial ruin. A contrary result would threaten the future of all civil rights laws by permitting any public institution to invoke financial burdens to escape liability. Thus, recognizing a cause of action under Title IX for peer sexual harassment encourages schools to confront rather than protect discrimination.

STATEMENT

Amici hereby adopt and incorporate by reference the Statement of Facts set forth in Petitioner's brief.

INTRODUCTION

For schools, educators, and students across the country, peer sexual harassment has become a persistent problem[2] that increasingly requires schools to act. In the

---

[2] See, e.g., University of Conn. Sch. of Soc. Work, Permanent Comm'n on Status of Women, In Our Own Backyard: Sexual Harassment in Connecticut's Public High Schools, Executive Summary 2 (1995) (finding that 78% of high school students in Connecticut reported at least one experience of sexual harassment during high school years; noting that 76% of harassers were other students) [hereinafter In Our Own Backyard]; Susan Fineran, Gender and Power Issues of Peer Sexual Harassment Among Teenagers, 14 Journal of Interpersonal Violence (forthcoming May 1999) (manuscript at 8, on file with author) (reporting that 84% of students surveyed in large, urban Illinois high school had experienced peer sexual harassment in school).

decision below, the Eleventh Circuit Court of Appeals shields schools from liability for peer sexual harassment under Title IX of the Education Amendments of 1972, even in the most extreme cases where schools know about severe harassment but ignore it. Davis v. Monroe County Board of Education, 120 F.3d 1390 (11th Cir. 1997) (en banc), cert. granted in part, 66 U.S.L.W. 3387, 67 U.S.L.W. 3186 (U.S. Sept. 29, 1998) (No. 97-843). The decision contravenes important Department of Education policies and decisions of other courts, both of which direct schools to take prompt and appropriate action to remedy peer sexual harassment. By relieving schools of their responsibility to remedy known harassment, the decision takes a step backwards, allowing schools to be indifferent to complaints of sexual harassment between students -- an indifference that causes serious emotional and educational harm.[3]

ARGUMENT

I. Recognizing a Cause of Action for Peer Sexual Harassment Will Not Unduly Burden Schools.

Schools have the institutional capacity to pursue a broad array of reasonable responses to sexual harassment, while adhering to their legal responsibility to respond immediately and appropriately, see Department of Education Office for Civil Rights, Sexual Harassment Guidance: Harassment of Students by School Employees,

---

[3] See Nan Stein, Sexual Harassment in School: The Public Performance of Gendered Violence, 65 Harvard Educ. Rev. 145, 148-49, 156-57 (1995) [hereinafter Sexual Harassment in School].

Other Students or Third Parties, 62 Fed. Reg. 12,034, 12,039, 12,042 (1997) ("OCR Guidance").[4] Among the many available options are counseling or reprimanding the alleged harasser, adopting informal solutions to the problem, or imposing gradually escalating punishment. Thus, schools often need only resort to suspension or expulsion when other measures have failed.

In the decision below, a lone member of the majority[5] asserts that holding schools liable for failing to take appropriate steps to remedy known harassment would force schools to expel all accused harassers or risk potential liability.[6] This extreme view fundamentally misapprehends the guidelines of the Department of Education's Office for Civil Rights (the "OCR"), as well as federal case law.

Requiring schools to respond appropriately when they have notice of peer sexual harassment does not bind

---

[4] Courts have accorded "appreciable deference" to the Department of Education's interpretation of Title IX, Cohen v. Brown Univ., 991 F.2d 888, 895 (1st Cir. 1993) ("Although [the Department of Education] is not a party to this appeal, we must accord its interpretation of Title IX appreciable deference."); see also Udall v. Tallman, 380 U.S. 1, 16 (1965) (observing that Supreme Court "gives great deference to the interpretation given the statute by the officers or agency charged with its administration").

[5] Judge Tjoflat authored the majority opinion for the court, but the other members of the majority did not join sections IIIB and IIIC of his opinion.

[6] Davis, 120 F.3d at 1402 (requiring schools to take appropriate action to respond to sexual harassment would force schools to "immediately isolate an alleged harasser from other students to avoid the threat of a lawsuit under Title IX") (Tjoflat, J.).

schools to a particular course of discipline, nor does it supplant the school's important role in meting out punishment and other forms of discipline. Rather, it encourages schools to confront harassment promptly and consider thoughtfully how best to respond. Hence, schools retain considerable freedom to respond to allegations of harassment while fulfilling their legal obligations.

A. Requiring Schools to Take Appropriate Steps to Remedy Peer Sexual Harassment Imposes Reasonable Obligations on Schools.

Both the Department of Education and numerous court cases have established straightforward legal standards delineating schools' responsibilities to respond to peer sexual harassment. The OCR Guidance developed by the Department of Education requires schools to take immediate and appropriate steps to remedy a sexually hostile educational environment upon notice of the harassment. OCR Guidance at 12,039-40. Schools that fail or refuse to respond to known harassment are engaging in discrimination in violation of Title IX by permitting "an atmosphere of sexual discrimination to permeate the education program." Id. at 12,039.

Conversely, schools can avoid liability by taking appropriate steps to remedy the harassment when they learn about it. Id. at 12,039-40. The OCR Guidance directs schools to take steps that are reasonably calculated to remedy the harassment, but leaves schools flexibility and discretion to determine what constitutes an appropriate response given the facts of a particular case. Id. at 12,042 ("What constitutes a reasonable response to informati on

about possible sexual harassment will differ depending upon the circumstances."). Under this approach, schools' liability will turn on their own responses to sexual harassment allegations, rather than on the specific acts of individual students. This approach also is consistent with the broader goal of encouraging schools to concentrate on developing sound practices for responding to harassment allegations.[7] Moreover, preserving this basic legal standard while recognizing a peer harassment cause of action gives schools clear guidance about their legal obligations and an incentive to confront harassment when it happens, and it provides victims with a vehicle for remedying discrimination.

In accordance with this standard, a number of courts have required schools to take prompt and appropriate action to respond to known peer sexual harassment.[8] Consistent

---

[7] See Kathryn Wells Murdock & David Kysilko, National Ass'n of State Bds. of Educ., Sexual Harassment in Schools: What It Is, What To Do 6 (David Kysilko ed., 1993); In Our Own Backyard at 3.

[8] See, e.g., Oona R.-S.- v. McCaffrey, 143 F.3d 473, 477 (9th Cir. 1998) (schools have a duty under Title IX to take reasonable steps to prevent harassment), amended on denial of reh'g, No. 95-16046, 1998 WL 216944 (9th Cir. May 5, 1998), petition for cert. filed, 67 U.S.L.W. 3083 (U.S. June 19, 1998) (No. 98-101); Doe v. University of Ill., 138 F.3d 653, 661 (7th Cir. 1998), petition for cert. filed, 67 U.S.L.W. 3083 (U.S. July 13, 1998) (No. 98-126) (schools may be held liable for failure to take prompt, appropriate action in response to student-to-student sexual harassment); Brzonkala v. Virginia Polytechnic Inst. & State Univ., 132 F.2d 949, 958 (4th Cir. 1997), vacated and reh'g en banc granted, Nos. 96-1814, 96-2316 (4th Cir. Feb. 5, 1998) (Title IX prohibits failure to take prompt and adequate remedial action to remedy a known sexually hostile environment); Nicole M. v. Martinez Unified Sch. Dist., 964 F. Supp. 1369, 1378 (N.D. Cal. 1997) (schools can be liable, under Title IX, for failing to

with the OCR Guidance, these courts have made clear that schools will not be held liable solely because they choose one course of action over another. For instance, the Seventh Circuit has affirmed that the choice facing school officials with knowledge of peer sexual harassment "is not a binary one between an obviously appropriate solution and no action at all." Doe v. University of Ill., 138 F.3d at 667-68. Instead, officials may select among "a range of responses," and are required merely to choose a responsive strategy that involves "investigat[ing] aggressively" all sexual harassment grievances and "respond[ing] consistently and meaningfully when those complaints are found to have merit." Id. Thus, a school's liability does not rest on whether or not the harassment actually ended. Doe v. Oyster River Coop. Sch. Dist., 992 F. Supp. 467, 480 (D.N.H. 1997) ("[E]ven if the sexual harassment

---

take adequate steps to remedy harassment); Collier v. William Pa. Sch. Dist., 956 F. Supp. 1209, 1212 (E.D. Pa. 1997) (schools may be held liable under Title IX for failing to respond to peer sexual harassment); Franks v. Kentucky Sch. for the Deaf, 956 F. Supp. 741, 748 (E.D. Ky. 1996) (schools liable under Title IX for failure to remedy known peer sexual harassment), aff'd, 142 F.3d 360 (6th Cir. 1998); Bruneau v. South Kortright Cent. Sch. Dist., 935 F. Supp. 162, 172 (N.D.N.Y. 1996) (educational institutions violate Title IX if they fail to take steps to remedy peer sexual harassment); Doe v. Petaluma Sch. Dist., 949 F. Supp. 1415, 1425, 1427 (N.D. Cal. 1996) (schools may be liable for hostile environment claims if they know about harassment but fail to take prompt and appropriate remedial action); see also Monteiro v. Tempe Union High Sch. Dist., No. 97-15511, 1998 WL 727338, at *9 (9th Cir. Oct. 19, 1998) (school district obligated to take reasonable steps to eliminate known peer racial harassment in accordance with Department of Education's interpretation of Title VI). But see Davis, 120 F.3d at 1406 (finding schools not liable for peer sexual harassment under Title IX); Rowinsky v. Bryan Indep. Sch. Dist., 80 F.3d 1006, 1016 (5th Cir.) (same), cert. denied, 117 S. Ct. 165 (1996). See generally OCR Guidance at 12,039-40.

continues, the school could possibly be exonerated if it took reasonable steps to stop the harassment every time it became aware of it.").[9]

Courts may not second-guess school officials' professional judgments that are "plausibly directed toward putting an end to the known harassment." Doe v. University of Ill., 138 F.3d at 667. This even-handed approach holds schools accountable for their own actions, without interfering with schools' discretion to evaluate the particular facts of each case, weigh potential responses, and determine the appropriate steps to remedy sexual harassment.

Yet despite the range of options the Monroe County Board of Education and the Hubbard School had at their disposal to fulfill their legal duty of responding promptly and appropriately to the Davises' complaint, they did virtually nothing to remedy the sexual harassment that LaShonda suffered for six months. Respondents were not limited to the extremes of complete inaction on one hand, or immediate suspension or expulsion, on the other hand, as feared by one member of the court below. See Davis, 120 F.3d at 1401 (Tjoflat, J.). Rather, school officials could

---

[9] In the analogous context of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. § 2000e et. seq., federal courts have regarded prompt and thorough investigations, including interviews of witnesses, and remedial and disciplinary measures as indicia of adequate responses to sexual harassment, see, e.g., Mockler v. Multnomah County, 140 F.3d 808, 813-14 (9th Cir. 1998). Thus, under Title VII, courts have had many years of experience evaluating the adequacy of responses to sexual harassment.

have investigated the complaint,[10] interviewed witnesses, counseled the alleged harasser, imposed progressive discipline, or, at the very least, permitted LaShonda to change her seat so that she did not have to sit next to the alleged harasser for three months. In fact, school administrators would have entertained no doubt regarding the availability of these measures, had the school adopted a sexual harassment policy and grievance procedures before receiving LaShonda's complaint. In neglecting to acknowledge the breadth of viable alternatives to automatic suspension or expulsion, Judge Tjoflat exaggerates the burden confronting schools that aim to remedy peer sexual harassment, and therefore permits schools to condone even the most egregious conduct.

B. Schools Routinely Handle a Wide Range of Disciplinary Matters and Have Adequate Existing Mechanisms for Addressing Peer Sexual Harassment Complaints.

As part of their multifaceted role as educators, schools often must grapple with a variety of issues arising from students' interactions with one another inside and outside the classroom. Schools must balance their academic responsibility to students with their concurrent "custodial and tutelary" responsibilities that allow them to maintain order and discipline in schools consistent with constitutional safeguards.[11] Vernonia, 515 U.S. at 655; see also Tinker

---

[10] Indeed, even a cursory investigation would have confirmed the harassment, given that G.F., the student who harassed LaShonda, did not deny a criminal charge of sexual battery. Davis, 120 F.3d at 1394.

[11] This Court has often provided schools with guidance for ensuring that the students' constitutional rights are preserved in the

v. Des Moines Indep. Community Sch. Dist., 393 U.S. 503, 507 (1969) (stressing the "comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools"); T.L.O., 469 U.S. at 342 n.9 ("The maintenance of discipline in the schools requires not only that students be restrained from assaulting one another, abusing drugs and alcohol, and committing other crimes, but also that students conform themselves to the standards of conduct prescribed by school authorities."). To accomplish these goals, schools have at their disposal an array of possible interventions, including counseling, conflict resolution strategies, student codes of conduct, and disciplinary measures, that can be used to resolve conflicts when they arise and foster positive relationships between students.[12]

---

course of maintaining school discipline. See, e.g., Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260 (1988) (considering First Amendment implications of speech restrictions in student newspaper); Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675 (1986) (considering First Amendment implications of symbolic speech); Goss v. Lopez, 419 U.S. 565 (1975) (considering due process implications of suspensions lasting up to 10 days); Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 656 (1995) (considering Fourth Amendment implications of random drug tests); New Jersey v. T.L.O., 469 U.S. 325, 337 (1985) (considering Fourth Amendment implications of warrantless searches by school officials allegedly fueled by reasonable suspicion); Ingraham v. Wright, 430 U.S. 651 (1977) (considering Eighth Amendment implications of corporal punishment).

[12] Under Georgia law, for example, local boards of education that receive state funds must "adopt a student code of conduct" and "provide for disciplinary action against students who violate [that] code." Ga. Code Ann. § 20-2-751.3(a), (b) (Supp. 1998). Further, schools are required to develop "school safety plans" to help curb school violence and promote a safe learning environment. Id. § 20-2-1185(a) (1996). The state also requires the State Board of Education to develop a "school climate management program" to help, inter alia, decrease student suspensions, expulsions, and dropouts; and to produce model codes of behavior and discipline upon the request of a local school system. Id. § 20-2-155(a). Additionally, the state authorizes the State Board of Education to create an in-school suspension program. Id. § 20-2-155(b).

Coupled with schools' general experience in making disciplinary decisions, these mechanisms also equip schools to respond to peer sexual harassment. By adapting the structural apparatus they already have in place to the special context of sexual harassment, schools may well be able to resolve grievances informally, thereby avoiding litigation.[13] Accordingly, because litigation is far from inevitable in any given sexual harassment case, imposing liability on schools who fail to address sexual harassment complaints promptly and appropriately does not inexorably inundate all schools with lawsuits, see infra Part II -- contrary to the lower court's assertions, see Davis, 120 F.3d at 1405 (Tjoflat, J.).

C. A Large Body of Educational Expertise Confirms That Schools Have Abundant Options for Responding to Peer Sexual Harassment Complaints.

Schools retain the flexibility to fashion an educationally appropriate, fact-specific response to peer sexual harassment within the general legal guidelines the OCR Guidance articulates. Once a school has notice of harassment, it must investigate what happened, see OCR Guidance at 12,042. However, the school may tailor its investigation to the particular circumstances of the

---

[13] See infra note 17.

grievance, see id. For example, the school could set up a complaint management system in advance to facilitate a prompt and thorough response. Robert J. Shoop, Sexual Harassment Prevention: A Guide for School Leaders 58 (1997). This system could designate a person or team in each school building to oversee sexual harassment complaints. See Eleanor Linn et al., Bitter Lessons for All: Sexual Harassment in Schools, in Sexuality and the Curriculum: The Politics and Practices of Sexuality Education 106, 119 (James T. Sears ed., 1992); Robert J. Shoop & Debra L. Edwards, How to Stop Sexual Harassment in Our Schools: A Handbook and Curriculum Guide for Administrators and Teachers 126 (1994). Schools need not hire additional personnel to fulfill this function: the complaint manager may be a principal, assistant principal, counselor, or teacher. Shoop & Edwards, supra, at 126. Notwithstanding the conclusion of one member of the court below, see Davis, 120 F.3d at 1402 ("Physical separation of the alleged harasser from other students is the only way school boards can ensure that they cannot be held liable for future acts of harassment.") (Tjoflat, J.), a school may choose to separate the alleged harasser from the target of harassment while the investigation is underway, but is not necessarily legally required to do so, see OCR Guidance at 12,043.

If a school finds that sexual harassment has occurred, it must take immediate and appropriate steps to end the harassment. See OCR Guidance at 12,042; see also Oona R.-S.-, 143 F.3d at 477 (holding that "the duty to take reasonable steps to remedy a known hostile environment created by a peer is clearly established" in the Ninth Circuit). Again, however, a school has the discretion to vary its response according to the severity of the

harassment, any previous record of harassment, and its existing disciplinary procedures. For instance, a school may decide to counsel, warn or take disciplinary action against the harassing student, with escalating consequences such as suspension or expulsion if the initial measures do not curb the harassment. See OCR Guidance at 12,043.

Over and above the legal standard requiring schools to respond to known sexual harassment, there is much schools can do to maximize the effectiveness of their response and to prevent harassment from recurring. To increase the likelihood that its response to sexual harassment will be effective, a school might well make efforts to foster greater awareness of sexual harassment among complaint managers and other community members such as teachers, administrators, staff, students, and parents. Toward this end, schools can choose among a variety of approaches. Although schools are legally required to adopt and publish a policy against discrimination, as well as grievance procedures for complaints of sex discrimination, see 34 C.F.R. § 106.8(b), schools may adapt the policy to their specific situation, as long as the policy enables them to respond effectively to sexual harassment. See OCR Guidance at 12,044. Because the policy's effectiveness is directly linked to the process a school uses to develop it, schools may wish to consider involving teachers, parents, and students in drafting the policy. See Shoop, supra, at 50; see also Michigan Middle School Students Craft Sexual Harassment Policy For Their School, Educator's Guide to Controlling Sexual Harassment, Nov. 1998, at 1-2 (reporting that harassment complaints at Michigan middle school declined following adoption of sexual harassment policy drafted by eighth-grade civics class; noting commentators' opinions that

permitting students to draft own sexual harassment policy is "a good way to get kids to take such policies seriously"). Schools may even raise the consciousness of the wider community by using poster campaigns encouraging the reporting of sexual harassment. See Eleanor Linn, Hamilton Fish Nat'l Inst. on Sch. & Community Violence, Effectiveness of Existing Programs and Approaches for Reducing Sexual Harassment and Sexual Violence in School (forthcoming Dec. 1998) (manuscript on file with author).

Finally, training programs that focus on educating the entire educational community to recognize and correct sexual harassment can further schools' success in responding effectively to harassment complaints. See Shoop, supra, at 101-02. Once again, schools can draw upon a multitude of alternatives in designing training programs for parents and employees, see id. at 102, as well as students, see id. at 110, and there are many resources available to assist them.[14]

---

[14] In addition to those already cited, a small sample of the wide range of available resources includes the following:

- Pam Hillesheim-Setz et al., "Be A Sport": What You Need to Know About Sexual Harassment (1994);
- Minnesota Dep't of Educ., Sexual Harassment to Teenagers: It's Not Fun / It's Illegal: A Curriculum for Identification and Prevention of Sexual Harassment for Use With Junior and Senior High School Students (rev. ed. 1996);
- Kathryn Wells Murdock & David Kysilko, National Ass'n of State Bds. of Educ., Sexual Harassment in Schools: What It Is, What to Do (David Kysilko ed., 1993);

The experiences of schools around the country confirm that these responses to sexual harassment are both feasible and effective. For instance, schools in Minnesota and Nebraska have adopted policies against sexual harassment, in-service programs for employees, and age-appropriate curricula for students. These schools have found that such strategies help to resolve harassment complaints without litigation; decrease the incidence of harassing behaviors; facilitate efforts to counsel students and parents in the wake of incidents of harassment; and prompt more assertive behavior by victims of sexual harassment. See Shoop & Edwards, supra, at 142-48. In several Massachusetts schools, both male and female

---

- Sue Sattel, Sexual Harassment in Schools: A Guide to Prevention, Intervention, and Investigation (Jamie Whaley ed., 1996);
- Nan Stein & Lisa Sjostrom, National Educ. Ass'n Prof'l Library, Flirting or Hurting? A Teacher's Guide on Student-to-Student Sexual Harassment in Schools (Grades 6 Through 12) (1994);
- Susan Strauss et al., Girls and Boys Getting Along: Teaching Sexual Harassment Prevention in the Elementary Classroom - Includes Grades K-3 and 4-6 Curricula (rev. ed. 1997);
- Susan Strauss & Pamela Espeland, Sexual Harassment and Teens: A Program for Positive Change (1992); and
- Thompson Publ'g Group, Educator's Guide to Controlling Sexual Harassment (1994) (offering monthly updates on recent cases and changes in sexual harassment law).

students as young as ten years old have reported the benefits of curricula focusing on sexual harassment: an awareness of the harm of sexual harassment; an increased ability to stop harassing behavior by their peers; and, above all, the freedom to focus on classes without the disruptions previously caused by constant sexual harassment. See Sexual Harassment in School at 150, 160.

II. Schools Can Fulfill Their Obligations to Students Who Have Been Sexually Harassed Without Jeopardizing Their Legal or Financial Position.

Requiring schools to respond to sexual harassment is entirely consistent with their legal obligations to students accused of harassment. Schools need not automatically suspend or expel students accused of sexual harassment in order to avoid liability, see supra Section I.A. However, even in those instances where serious punishment is necessary, school officials can respond to sexual harassment complaints without infringing on accused harassers' due process rights or wreaking financial havoc on public institutions. Hence, the specter of "whipsaw" and "sky-rocketing" liability raised below mischaracterizes completely the result of holding schools responsible for peer sexual harassment. Davis, 120 F.3d at 1401 (Tjoflat, J.). Far from excusing school officials from enforcing Title IX and working to eliminate sexual harassment, the need to provide due process to students accused of harassment offers a strong incentive to safeguard all students' rights. As the OCR Guidance recognizes, "procedures that ensure the Title IX rights of the complainant while at the same time according due process to both parties involved will lead to sound and supportable decisions." Id. at 12,045.

Indeed, school policies requiring officials to respond to peer sexual harassment complaints provide a vehicle for accommodating alleged offenders' due process rights. For instance, should officials propose to expel a student for sexual harassment, the subsequent proceedings could and should include adequate due process protections. First, the school's sexual harassment committee could conduct a hearing that allowed the alleged harasser to exercise his or her due process rights through such means as testifying, presenting witnesses, questioning the principal's witnesses, and making a closing statement. The school could give the student and his or her parents written notice of the time and place of the hearing and of the charge against the student. Second, the committee could issue a report summarizing its findings and conveying its decision. Shoop & Edwards, supra, at 168-69. These safeguards would far exceed the minimum due process protections for expulsion, the most severe of educational sanctions. Even for expulsion, courts have merely held that due process requires schools to give sufficient notice of the substance of the charges and the underlying facts to allow students to respond meaningfully. See Jenkins v. Louisiana State Bd. of Educ., 506 F.2d 992, 1000 (5th Cir. 1975) (noting that due process requires notice and some opportunity for hearing before expulsion for misconduct can be imposed; deeming sufficient notice that fairly enabled students to present defense at hearing); Hatch v. Goerke, 502 F.2d 1189, 1195 (10th Cir. 1974) ("[A]t least an informal hearing, with knowledge of the misconduct charged and an opportunity to respond or appeal for leniency, is called for before the opportunity to receive an education is denied through an expulsion or a lengthy or indefinite suspension."); see also Goss v. Lopez, 419 U.S. 565, 581-84 (1975) (construing Due Process Clause to require that student facing suspension of ten days

or fewer be given oral or written notice of charges, explanation of evidence in authorities' possession, and opportunity to present his or her version of events at an informal hearing).[15]

Moreover, the threat of so-called "whipsaw" liability has not excused school officials from enforcing other anti-discrimination statutes. For example, this Court recognized that schools were liable for teacher-to-student harassment under Title IX, see Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992), despite schools' obligation to uphold the due process rights of teachers accused of harassment, see Vanelli v. Reynolds Sch. Dist. No. 7, 667 F.2d 773, 777 (9th Cir. 1982) (holding that teacher terminated for sexually harassing students during term of one-year employment contract had protected property interest, triggering due process protections for termination). Schools are likewise required to protect students from peer racial harassment under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d et seq., see Monteiro v. Tempe Union High Sch. Dist., 1998 WL 727338, at *9 (adopting Department of Education's interpretation of Title VI as prohibiting peer racial harassment), although students facing disciplinary action for racial harassment would surely enjoy the same due process

---

15 The mere possibility that school officials may face personal liability under 42 U.S.C. § 1983 for transgressing Title IX does not give them "an impermissible financial incentive to punish alleged student harassers," generating due process violations, as is claimed in Davis, 120 F.3d at 1403-04 & n.21 (Tjoflat, J.). Rather, this financial interest is "highly speculative and contingent," and cannot give rise to a due process violation. See Aetna Life Ins. Co. v. LaVoie, 475 U.S. 813, 826 (1986); see also Doe v. University of Ill., 138 F.3d at 664n.8; Davis, 120 F.3d at 1407 (Carnes, J., concurring).

protections as students confronted with the same punishment for sexual harassment. Yet no one has suggested in these instances that schools can invoke the due process rights of alleged harassers as a justification for evading their legal obligations.[16]

Nor have courts -- the Davis court included, see 120 F.3d at 1406 (Tjoflat, J.) -- regarded the mere availability of a state tort remedy as grounds for relieving schools from their duty of care to students, based on a fear that schools would be overwhelmed with tort lawsuits. See, e.g., Cooper v. Baldwin County Sch. Dist., 386 S.E.2d 896, 898 (Ga. Ct. App. 1989) (noting that a school has a "duty of exercising ordinary care for the safety of its pupils from defects in the premises or from dangerous activities in which other pupils are engaged under the [school's] supervision").

As Judge Carnes' concurring opinion notes, the logical extension of Judge Tjoflat's reasoning would be to eviscerate state officials' legal obligations in a variety of settings, including jails and prisons, in which one person's complaint about another triggers due process concerns. Davis, 120 F.3d at 1409 (Carnes, J., concurring). For example, it would undermine public agencies' duty to respond to complaints of sexual harassment at work, see, e.g., Bator v. Hawaii, 39 F.3d 1021, 1029 (9th Cir. 1994); Bohen v. City of East Chicago, 799 F.2d 1180, 1187 (7th

---

16 Exempting schools from liability for their failure to respond to peer sexual harassment would also produce the anomalous result of retaining protection for teachers against sexual harassment by fellow teachers and even students, under Title VII, 29 C.F.R. §1604.11(e) (1995), while denying protection for students against sexual harassment by fellow students.

Cir. 1986), in which they must similarly respect the accused's due process rights, see Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 538-46 (1985) (finding that due process protections attach to deprivation of constitutionally protected property interest in public employment).

Finally, the opinion errs not only in predicting a "substantial" amount of litigation as a result of recognizing peer sexual harassment as a violation of Title IX, but in using this prediction as a basis for eliminating liability. See Davis, 120 F.3d at 1405-06 (Tjoflat, J.). First, the opinion relies on a survey for the proposition that sixty-five percent of students in grades eight to eleven suffered peer sexual harassment. Accordingly, the opinion anticipates that "whipsaw liability would arise in a substantial number of cases." Id. at 1405. But that survey neither evaluates the proportion of sexual harassment grievances that lead to litigation nor assesses the viability of those lawsuits, once filed.[17] Rather, the survey merely describes the prevalence and nature of sexual harassment.[18] As such, the survey

---

[17] Not every case of sexual harassment warrants litigation or other elaborate dispute-resolution mechanisms. There will be many situations where teachers and students can -- and should -- handle complaints informally to everyone's satisfaction. See Sexual Harassment in School at 158-59 ("We need to promote non-litigious remedies and to transport the lessons of the lawsuits into the classroom. Lawsuits can be preempted through preventive and sensible measures employed in the schools."); Shoop & Edwards, supra, at 137-38 (outlining five distinct steps educators may take to eradicate sexual harassment in schools, in lieu of litigation and legislative action).

[18] At any rate, studies of sexual harassment at work show that of employees who experience sexual harassment and attempt some form of response, only six percent make formal reports. See United States Merit Sys. Protection Bd., Sexual Harassment in the Federal Workplace at viii (1995).

offers no support for Judge Tjoflat's prediction.

In any event, the opinion illogically seeks to respond to widespread discrimination by eliminating liability for that discrimination. Schools' desires to avoid monetary damages from litigation should provide an incentive for education, prevention, and enforcement, instead of offering a rationale for protecting discrimination. In fact, this Court rightly rejected just such a cost-based defense to liability in the analogous[19] context of Title VII. See City of Los Angeles v. Manhart, 435 U.S. 702, 717 (1978) ("[N]either Congress nor the courts have recognized such a [cost justification] defense under Title VII."). If schools could successfully point to the financial burdens of litigation to escape accountability for peer sexual harassment, any public institution could similarly complain of financial ruin to avoid liability for any civil rights violation.[20] This runs afoul of our national commitment to civil rights laws, which specifically prohibit and provide a remedy for discrimination.[21]

---

[19] See supra note 9.

[20] The threat of boundless liability in damages for failing to respond to sexual harassment is all the more illusory in light of this Court's recent decision in Gebser v. Lago Vista Indep. Sch. Dist., 118 S. Ct. 1989 (1998). In Gebser, the Court held that a Title IX damages remedy was unavailable unless an official with the authority to address discrimination and institute corrective measures had actual notice of discrimination and exhibited deliberate indifference. Id. at 1999.

[21] See, e.g., 42 U.S.C. § 2000e (Title VII) (prohibiting discrimination based on race, color, religion, sex, or national origin); 42 U.S.C. § 2000d (Title VI) (prohibiting discrimination on race, color,

CONCLUSION

Exempting schools from liability sends the wrong message to schools and students alike -- that students can expect no support from their schools in confronting peer sexual harassment, however egregious. Accordingly, this Court should reverse the judgment of the United States Court of Appeals for the Eleventh Circuit.

Dated: November 10, 1998

Respectfully Submitted,

JUDITH L. LICHTMAN
DONNA R. LENHOFF*
* *Counsel of Record*
JOCELYN C. FRYE
SANDHYA L. SUBRAMANIAN

National Partnership
for Women & Families
1875 Connecticut Avenue, N.W.
Suite 710
Washington, D.C. 20009
(202) 986-2600

---

or national origin); 29 U.S.C. § 621 (Age Discrimination in Employment Act); 42 U.S.C. § 12101 (Americans with Disabilities Act).

APPENDIX

The **National Education Association (NEA)** is a nationwide employee organization with approximately 2.4 million members, the vast majority of whom are teachers and others employed by public school districts, colleges and universities. NEA is strongly committed to ending gender discrimination by educational institutions, including sexual harassment, and, to this end, firmly supports the vigorous enforcement of Title IX.

The **National Association of Social Workers (NASW)** is a professional membership organization comprised of more than 155,000 social workers with chapters in every state, the District of Columbia and internationally as well. Since 1955, the NASW's purposes have to develop and disseminate high standards of practice while strengthening and unifying the social work profession as a whole and improving the quality of life through the utilization of social work skills. In furtherance of its purposes, NASW adopts policy statements on issues of importance to the social work community. In its "Policy on Preschool, Elementary, and Secondary Education," NASW supported the proposition that "every child should be guaranteed the right to quality, nonsexist and integrated education." NASW believes that the "right to equal educational opportunity and to high-quality education includes a nonsegregated, nonsexist environment." School social workers and other professional social workers look to the protection of the law to achieve these important goals for the youth educated in American schools.

The **Illinois Coalition Against Sexual Assault (ICASA)** is a not-for-profit organization consisting of thirty-one community-based sexual assault centers in Illinois and a central headquarters located in Springfield. Founded in

1977, the purpose of ICASA is to end sexual violence, including sexual harassment, and to alleviate the suffering of its victims. To accomplish these goals, ICASA centers counsel victims, advocate for victims in the medical and criminal justice systems, present educational programs and provide information and referral services. In FY1997 alone, ICASA sexual assault centers provided counseling and advocacy to 12,238 victims of sexual violence. The ICASA administrative staff in Springfield also conduct trainings, maintain a resource library and advocate on a statewide level for the rights of victims of sexual violence. ICASA has an interest in this case by insuring that people are protected from sexual harassment in all situations, whether the harasser is a teacher, a supervisor, or, as in this case, a student.

Dr. Larry Bennett is an Assistant Professor at the Jane Addams College of Social Work at the University of Illinois at Chicago. He has published numerous articles and book chapters on peer sexual harassment and on domestic violence, including "Peer Sexual Harassment and the Social Work Response," *School Social Work: Practice and Research Perspectives* (co-authored with S. Fineran) (forthcoming, 1999); "Teen Peer Sexual Harassment: Implications for Social Work Practice in Education," *Social Work* (co-authored with S. Fineran) (1998); and "Gender and Power Issues of Peer Sexual Harassment Among Teenagers," *Journal of Interpersonal Violence* (co-authored with S. Fineran) (in press). Currently, he is principal investigator evaluating the State of Illinois' standards for batterers' intervention programs and the effectiveness of victim information programs. Mr. Bennett earned a B.A. at Southern Illinois University in 1969, an M.A. in Human Relations from Governors State University in 1976, an

M.S.W. at the University of Illinois at Chicago in 1983 and a Ph.D. from the University of Illinois at Chicago in 1990.

Dr. Susan Fineran is an Assistant Professor at Boston University School of Social Work. She is the author of numerous publications on the sexual harassment of students, including "Teen Peer Sexual Harassment: Implications for Social Work Practice in Education," *Social Work* (co-authored with Bennett, L.) (1998); "Gender and Power Issues of Peer Sexual Harassment Among Teenagers," *Journal of Interpersonal Violence* (co-authored with Bennett, L.) (in press); "Peer Sexual Harassment and the Social Work Response, School Social Work: Practice and Research Perspectives, 4th Ed., (co-authored with Bennett, L.) (1998); and *Potential Risk Factors for Sexual Harassment and Sexual Violence in Schools* (Hamilton Fish Institute on Community and School Violence, George Washington University) (1998). Her research focuses on risk factors that contribute to the perpetration and experience of peer sexual harassment, including students' emotional reaction to harassment, peer relationships and school responses. Ms. Fineran received her Ph.D. from the University of Illinois at Chicago in 1996.

Dr. Louise Fitzgerald is a Professor of Psychology and Women's Studies at the University of Illinois at Urbana-Champaign where she teaches a graduate course on the legal, behavioral, and organizational aspects of sexual harassment. Dr. Fitzgerald is a nationally known expert who has been writing and teaching about sexual harassment in schools, universities, and the workplace for over 15 years. Her publications in this area include: "Breaking Silence: The Sexual Harassment of Women in Academia and the Workplace," *Handbook of the Psychology of*

Women, (F. L. Denmark & M. A. Paludi, eds.) (co-authored with A. J. Omerod) (1993); "Sexual Harassment: The Definition and Measurement of a Construct," *Ivory Power: Gender and Sexual Harassment in the Academy*, (M. Paludi, ed.) (1990); *Sexual Harassment in Higher Education: Concepts and Issues* (National Education Association Monograph 1992); "Sexual Harassment: A Preliminary Test of an Integrated Model," *Journal of Applied Social Psychology* (co-authored with M. Hesson-McInnis)(1997); "Measuring Sexual Harassment: Theoretical and Psychometric Advances," *Basic and Applied Social Psychology* (co-authored with M. Gelfand and F. Drasgow)(1996). She has consulted on this topic with numerous federal agencies and national organizations, including the National Education Association. Dr. Fitzgerald has been awarded several honors for her work, including, in 1994, the Distinguished Contribution Award of the Washington Educational Press for Outstanding Treatment of a Public Concern and the *Shannon Award* from the National Institutes of Mental Health for her study "Outcomes of Sexual Harassment: An Integrative Process Model." In addition, she received a Women's Educational Equity Act grant from the U.S. Department of Education for her study "Tarnishing the Ivory Tower: Sexual Harassment on Campus." Dr. Fitzgerald earned her B.A. in Psychology *magna cum laude* from the University of Maryland in 1974, and her M.A. and Ph.D. in Psychology in 1975 and 1979 respectively from Ohio State University.

Sandra M. Gordon is the Student Services Liaison at the New Market Vocational Skills Center in Tumwater, Washington. She is an education consultant with extensive experience working with schools and vocational training programs on developing and implementing sex equity, bias

elimination and sexual harassment prevention programs. In her role as student services liaison, Ms. Gordon investigates harassment complaints, provides counseling and educational materials to victims and perpetrators of harassment and serves as an equity resource for the campus community. For six years, she has coordinated the efforts of the Ambassador Leadership Program in providing equity education, peer counseling and community building activities to the New Market campus and area high schools. Ms. Gordon is a member of the National Coalition for Sex Equity in Education and the Tumwater School District Diversity Committee.

Karetta Hubbard, co-founder of Hubbard & Revo-Cohen, Inc. (HRC) in Reston, Virginia, has over 15 years of experience in the field of sexual harassment prevention. She has counseled numerous organizations in both the public and private sector on strategies for sexual harassment prevention and intervention. Her clients include Mitsubishi, Nissan, Mazda, Ford/UAW, the U.S. Navy, numerous federal and state agencies, and several non-profit organizations such as the National Education Association. Ms. Hubbard attended the University of Virginia and received her B.A. from George Mason University.

Melissa Josephs is a Senior Policy Associate for the Women Employed Institute in Chicago, Illinois. She leads Working Partnerships' Sexual Harassment Prevention Services, a division of Women Employed, and has worked extensively with schools, municipal agencies and corporations on sexual harassment prevention, training and response. Ms. Josephs received a B.A. in English and Journalism from the University of Wisconsin-Madison and a J.D. from IIT Chicago-Kent College of Law.

Senator Jeanne Kohl represents the 36th District in the Washington State Senate. She also is on the faculty at the University of Washington, teaching courses on gender equity in education. From 1978-1984, Senator Kohl served as Program Manager for Project Equity, the Sex Desegregation Assistance Center for Region IX of the U.S. Department of Education, assisting school districts in implementing Title IX. In addition, Senator Kohl was Assistant Dean of Students, Coordinator of Women's Programs at the University of California, Irvine, and Principal Investigator for two grants funded by the Women's Educational Equity Act of the U.S. Department of Education. Senator Kohl holds a Ph.D. in Sociology of Education from U.C.L.A.

Nancy B. Kreiter directs the research and equal opportunity monitoring programs of Women Employed Institute in Chicago, Illinois and is a nationally recognized authority on sexual harassment in the workplace. One of three appointed consent decree monitors in the Mitsubishi $34 million class-action sexual harassment case, she oversees Mitsubishi Motor Manufacturing of America's efforts to respond to internal sexual harassment complaints and comply with sexual harassment policies. Ms. Kreiter holds a Masters of Science Research Certificate in Economics from the London School of Economics and Political Science.

Eleanor Linn is the Senior Associate Director of the Programs for Educational Opportunity/Center for Sex Equity in Schools at the University of Michigan, School of Education. Ms Linn has worked extensively as a consultant to schools and school districts, educators, community

groups and individuals seeking to promote gender equity in education. Ms. Linn has sixteen years experience giving technical assistance on Title IX compliance issues through projects in 25 school districts and two state Departments of Education. She has developed sexual harassment materials for students, and training materials for complaint managers and investigators that have reached more than 200,000 educators and community members in 30 states, 50 State Departments of Education and 85 community-based organizations. Ms. Linn was a major project consultant to *Hostile Hallways: The AAUW Survey on Sexual Harassment in America's Schools*, the American Association of University Women's ground-breaking study on sexual harassment in schools. Ms. Linn has published numerous articles related to sexual harassment in schools including, "The Role of School Mental Health Professionals in Resolving School Related Sexual Harassment Complaints," *Social Work in Education* (coauthored with Rosa Fua) (forthcoming); *Effectiveness of Existing Programs and Approaches for Reducing Sexual Harassment and Sexual Violence in Schools* (Hamilton Fish National Institute on School and Community Violence at The George Washington University) (1998); "The Culture of Sexual Harassment in Secondary Schools" *American Education Research Journal*, (co-authored with V. Lee, R. Croninger and X. Chen) (1996); "Bitter Lessons for All: Sexual Harassment in Schools," *Sexuality and the Curriculum*, (James T. Sears, ed.) (1992). In 1985, Ms. Linn collaborated in writing *Tune In To Your Rights: A Guide for Teenagers About Turning Off Sexual Harassment*, a highly acclaimed and widely distributed publication for students, now with over 200,000 copies sold. Ms. Linn has a M.A.

in Education from Lesley College Graduate School, a M.A.T. in Reading and Human Development from Harvard University and a B.A. from Brandeis University.

Dr. Bernice Lott is Professor Emerita of the Psychology and Women's Studies Departments at the University of Rhode Island and has been teaching on gender related issues for over 40 years. She has published scores of articles, studies and books, including: "Sexual Assault and Harassment: A Campus Community Study," *Signs* (coauthored with M.E. Reilly and D. Howard) (1982); "Tolerance for Sexual Harassment Inventory," *Gender Roles: A Handbook of Tests and Measures* (C.A. Beere, ed.) (1990); "Sexual Harassment of University Students" *Sex Roles* (co-authored with M.E. Reilly and S. Gallogly)(1986); *Women's Lives: Themes and Variations in Gender Learning* (1987), and "Sexual Harassment: Consequences and Remedies," *Combating Sexual Harassment in Higher Education*, (B. Lott and M.E. Reilly, eds.) (NEA 1995). Dr. Lott has been honored with numerous awards, including in 1995, the American Psychological Association's *Heritage Award*, for contributions to public policy and to efforts for social change. In 1996, Dr. Lott received the *Carolyn Wood Sherif Award* for contributions to scholarship, teaching, mentoring and leadership in the field of the psychology of women. Dr. Lott received a B.S. from the University of California at Los Angeles in 1950 and a Ph.D. from the University of California at Los Angeles in 1953.

Carl Moore is an employment lawyer and Vice President for Client Services at Hubbard & Revo-Cohen, Inc. in Reston, Virginia. While at HRC, he has helped conduct sexual harassment prevention training programs for

numerous clients, including Mitsubishi Motor Manufacturing of America and has been Project Director for the Sexual Harassment Prevention Training initiative of the Naval Sea Systems Command. Mr. Moore has extensive experience on a range of employment-related legal issues. In 1992, he was selected by the Majority and Minority Leaders of the United States Senate to create and administer an EEO complaint process for employees of the Senate. He has served as general counsel for a federal employee appeals board and chief labor counsel for the Department of the Navy. He also has served as executive director and general counsel for a federal employees' union and has designed and taught courses on employment law for the Department of Justice, Legal Education Institute. Mr. Moore holds a B.A. from Texas Tech University and a J.D. from the University of Texas at Austin.

Lynne Revo-Cohen is Principal and co-founder of Hubbard & Revo-Cohen, Inc. in Reston, Virginia, and has over 15 years of experience in the field of sexual harassment prevention. She has counseled numerous organizations in both the public and private sector on strategies for sexual harassment prevention and intervention. Her clients include Mitsubishi Motor Manufacturing of America, Nissan, Mazda, Ford/UAW, the U.S. Navy, numerous federal and state agencies, and several non-profit organizations such as the National Education Association. Ms. Revo-Cohen holds a B.A. from the State University of New York at Buffalo and a M.A. from the University of Maryland.

Dr. Bernice R. Sandler is a Senior Scholar in Residence at the National Association for Women in Education where she writes the newsletter, *About Women On Campus*. She has over 25 years of experience working with educational

institutions as a trainer, consultant and speaker on issues involving sex discrimination in education, Title IX , policy analysis, and sexual harassment. She has given over 2,000 presentations and wrote the first national reports on campus sexual harassment in 1979 and peer harassment in 1988. Among her more than 100 publications are "Elements of a Good Policy" and "Student-to-Student Sexual Harassment" in *Sexual Harassment on Campus: A Guide for Administrators, Faculty and Students* (B. Sandler and R. Shoop, eds.) (1996), and *The Educator's Guide to Controlling Sexual Harassment* (1991). She received her Ed.D. from the University of Maryland in 1969, and has been awarded ten honorary degrees for her work.

Sue Sattel is an equity specialist in Minnesota who has consulted extensively with schools in Minnesota and around the country. She has authored a number of works on sexual harassment, including *Sexual Harassment in Schools: A Guide to Prevention, Intervention and Investigation* (1996) and "Sexual Harassment and Sexual Orientation: The Coaches' Corner," *Overcoming Heterosexism and Homophobia: Strategies That Work*, (J. Sears, and W. Williams, eds.)(1997). She is co-author of an elementary sexual harassment prevention curriculum entitled "Girls and Boys Getting Along: Teaching Sexual Harassment Prevention in the Elementary Classroom - Includes Grades K-3 and 4-6 Curricula" (Minnesota Dept. of Children, Families & Learning 1993, revised 1997), and of revisions of "Sexual Harassment to Teenagers: It's Not Fun/It's Illegal: A Curriculum for Identification and Prevention of Sexual Harassment for Use with Junior and Senior High School Students" (Minnesota Dept. of Children, Families & Learning 1986, revised 1996). Ms. Sattel earned her B.A. in Social Science from Michigan State University in 1964, a

Minnesota Teaching Certificate in 1974 and an M.A. in Curriculum and Instruction from the University of Oregon in 1978.

Karen D. Schwartzrock is an education consultant who works with school districts, education service districts, and other education-related organizations in the areas of education, law, discrimination, labor relations, gender equity, educational policy and school improvement. During the past five years she has formulated school district policies and conducted training sessions for administrators, teachers, parents, staff and students in the area of sexual harassment generally and peer sexual harassment specifically. Her training outlines the laws protecting students, the negative consequences associated with sexual harassment and proactive prevention strategies. Ms. Schwartzrock has given papers and presentations at various national and state conferences including for the American Association of School Administrators, American Education Research Association and the Education Law Association. Ms. Schwartzrock has a B.A. in History, a M.A. in Public Administration and is completing her Ph.D. in Educational Policy with an emphasis in education law.

Dr. Charol Shakeshaft is Professor of Administration and Policy Studies in the School of Education at Hofstra University and Managing Director of Interactive, Inc., an educational research, evaluation, and technology company. Since 1979, she has directed an institute to help move women into positions in school administration. Her work on equity in schools as taken her into school systems across the United States, Canada, and Europe where she has helped educators make schools more welcoming to women and girls. Her award winning book, *Women in Educational*

Administration, has had five press runs. Her newest book, *In Loco Parentis: Sexual Harassment and Abuse in Schools*, will be out in Spring/Summer 1999. In addition to serving on the editorial boards of 6 journals, Professor Shakeshaft is a former division head of the American Educational Research Association, where she also served on its executive board. She is a founding member of the National Women's Studies Association and is on the board of directors for the Project on Gender and Education, the New York State Association for Women Administrators, and Women on the Job. As the author of articles and books on gender and schools, the importance of her research has been recognized by both academic and practitioner audiences through such awards as the New York State Education Department's Sex Equity Award, the American Educational Research Association's Willystine Goodsell Award, Women Educator's Best Research Award, the Educational Press Association of America's Distinguished Achievement Award for Writing, the Jack A. Culbertson Award for Outstanding Contributions to Organizational Theory and Women on the Job's Award for Contributions to Women's Employment. She earned a B.A. in English from the University of Nebraska at Lincoln in 1972, a M.S. in Organizational Behavior Specialization from Texas A&M University in 1978 and a Ph.D. from Texas A&M University in Research, Planning and Evaluation Specialization with supporting work in Sociology in 1979.

Dr. Robert J. Shoop is a Professor of Educational Law at Kansas State University. He is the author of eleven books including *Sexual Harassment Prevention* (1997); *Sexual Harassment on Campus* (1996); *How to Stop Sexual Harassment in Our Schools* (1994) and *School Law for the Principal* (1992). In addition, Dr. Shoop is the author of

over 100 articles, monographs and book chapters along with several educational video programs. These credits include: *Sexual Harassment: What is it and Why Should We Care?* for the National School Board Association; *Sexual Harassment: It's Hurting People*, for the National Middle School Association and *Preventing Sexual Harassment*, for Sunburst, Inc. His productions have received national and international recognition including, *First Place Award*, 1996 National Council of Family Relations Annual Media Competition; *1996 Gold Award of Merit*, Houston Film Festival and *1995 Goldon Camera Award*, International Film and Video Festival. Dr. Shoop is a recognized authority in the areas of educational law, risk management and sexual harassment prevention and has consulted with educational institutions across the country. Prior to earning his Ph.D. from the University of Michigan, Dr. Shoop worked as a public school teacher and administrator.

Dr. Nan Stein, Senior Research Scientist at the Center for Research on Women at Wellesley College, directs several national research projects on sexual harassment and related problems in schools. Ms. Stein has been working on the issue of sexual harassment in schools for over 19 years. In 1979, she developed the first curriculum on sexual harassment in schools for the Massachusetts Department of Education. She provides training to school personnel, gives lectures and conducts interviews; and has written numerous articles, books, teaching guides and curricula on the subject. Her works include *Flirting or Hurting? A Teacher's Guide on Student-to-Student Sexual Harassment in Schools for Grades 6 through 12* (co-authored with Lisa Sjostrom) (NEA Professional Library)(1994); *Secrets in Public: Sexual Harassment in Public (and Private) Schools*

(Center for Research on Women, Wellesley College) (1996), *Bullying and Sexual Harassment In Elementary Schools: It's Not Just Kids Kissing Kids* (Center for Research on Women, Wellesley College)(1997); "From the Margins to the Mainstream: Sexual Harassment in K-12 Schools," *Initiatives*, (Special Issue: Sexual Harassment, Part 2) (1996), and "It Happens Here, Too: Sexual Harassment and Child Sexual Abuse in Elementary and Secondary Schools," *Gender and Education* (S.K. Bilken and D. Pollard, eds.)(1993). She has been commissioned by the Office of Juvenile Justice and Delinquency Prevention at the U.S. Department of Justice to write a paper on sexual harassment and sexual violence in schools. She was co-principal investigator of a *Seventeen* magazine 1992 survey entitled *Secrets in Public: Sexual Harassment in Our Schools*, and will serve as co-principal investigator for the establishment of a National Violence Against Women Prevention Research Center, funded by the Center for Disease Control and Prevention. She has also been a middle-school social studies teacher and a public school drug and alcohol counselor. Ms. Stein holds a B.A. in History from the University of Wisconsin, an M.A. in Teaching from Antioch College Graduate School of Education and an Ed.D. from Harvard University Graduate School of Education.

Susan Strauss is a consultant, trainer, speaker and sexual harassment expert. She published the earliest article on sexual harassment of students in secondary schools, entitled "Sexual Harassment in the School: Legal Implications for Principals," *NASSP Bulletin* (1988), and published the first book on the topic, *Sexual Harassment and Teens: A Program for Positive Change* (1992). She has developed and conducted training seminars for over 7,000

administrators, faculty, school staff and students in K-12 and university settings on sexual harassment prevention and intervention strategies, sexual harassment investigations, and sexual harassment survey development and dissemination. She has developed several curricula and training manuals to address sexual harassment in schools, including "Sexual Harassment to Teenagers: It's Not Fun/It's Illegal: A Curriculum for Identification and Prevention of Sexual Harassment for Use with Junior and Senior High School Students" (Minnesota Department of Children, Families and Learning) (1986). Her many other publications in this area include "Sexual Harassment in the Schools," *Vocational Education Journal* (1993); "Sexual Harassment at an Early Age, *Principal* (1994); "Prompt & Equitable: The Importance of Student Sexual Harassment Policies in the Public Schools," *Education Law Reporter* (co-authored with D. Doty) (1996); and "Sexual Harassment/Violence Surveys of Elementary, Secondary and Post-Secondary Institutions in Minnesota Conducted by the Minnesota Attorney General's Office" (presented at the *Ninth International Congress on Women's Health Issues*, Alexandria, Egypt, June, 1998). In 1987, she was awarded the Minnesota Department of Education's Excellence in Educational Equity Award for the work she has done in the area of sexual harassment. Ms. Strauss has an R.N. from Abbott Hospital School of Nursing, a Teaching Certificate in Vocational Education, a B.S. in Psychology & Counseling from Metropolitan State University, an M.S. in Community Health from Mankato State University and a Professional Certificate in Training and Development from the University of Minnesota.

Margaret Weeks, Director of Gender Equity and Special Projects of the Nebraska Department of Education, is an

expert on sexual harassment in schools and has worked extensively with educators in developing and implementing sexual harassment prevention programs. Since 1979, Ms. Weeks has assisted school districts in addressing areas of Title IX and Title VII compliance including sexual harassment and student discipline issues. Ms. Weeks has conducted numerous workshops on sexual harassment and gender equity for students, parents, educators and members of the public for the Nebraska Department of Education. She has authored several publications on gender equity and sexual harassment including: "No Joke: Sexual Harassment in Schools" *Leadership Nebraska* (1996) and the "State Board of Education Position Statement on Sex Equity in Education" on behalf of the state of Nebraska. From 1992-1995, Ms. Weeks was a member of the Steering Committee of the National Coalition for Sex Equity in Education. She holds a B.A. in English from Duchesne College, a Nebraska K-12 Teaching Certificate and an M.A. equivalent from the University of Nebraska at Lincoln in Educational Psychology and Human Development.